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OFFICE OF PETITIONS

In re Application of
Frantzen.
Application No. 09/869,060
Filed: June 25, 2001
Attorney Docket No. 09100.21

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 17, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 25, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 26, 2003.

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in § 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy the above requirement (1) since no reply has been submitted with the petition.

Additionally, please include a showing from Karen Lee Orzechowski (hereinafter Orzechowski) as to why action was not taken to prevent the application from becoming abandoned while the application was under Orzechowski's control. Petitioner should send a letter (accompanied by a copy of this decision) to Orzechowski by registered or certified mail, return receipt requested, indicating to Orzechowski that the PTO is requesting her assistance in determining the circumstances surrounding the abandonment of this application, and is specifically requesting Orzechowski to provide a statement as to: (1) whether the office action of March 25, 2003 was received and/or docketed for reply, (2) with whom, and when Orzechowski corresponded about a reply to the aforementioned office action, (3) why the reply was not timely submitted, and (4) what action(s) was taken upon receipt of the Notice of Abandonment of October 2, 2003. Such statements should be accompanied by copies of any documents (e.g., correspondence from or to Orzechowski) relevant to the office action and Notice of Abandonment. In the event that Orzechowski fails to provide a statement within a period (e.g., within one (1) month) specified in such letter, petitioner should submit a copy of such letter and the return receipt indicating its delivery to Orzechowski with any renewed petition under 37 CFR 1.137(b). According to PTO records, Orzechowski may be reached at (703) 442-9285; IP Law Specialist, LLC, 7777 Leesburg Pike, Suite 304 North, Falls Church VA 22043.

The power of attorney filed on March 17, 2005 pursuant to 37 CFR 3.71 is not acceptable. While the power of attorney appears to be signed by a person having apparent authority to sign on behalf of the assignee (i.e., C.S.O. appears to be an officer of the assignee), the power of attorney does not include documentary evidence of a chain of title from the original owner to the Assignee (e.g., copy of an executed assignment submitted for recording) or a statement specifying, by reel and frame number, where such evidence is recorded in the Office as required by 37 CFR 3.73(b)(1). See also MPEP 324.II. However in anticipation of a renewed petition under 37 CFR 1.137(b) being filed, a courtesy copy of this petition and the March 25, 2003 Office Action with related documents are being provided to the petitioner.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.



Brian Hearn
Petitions Examiner
Office of Petitions

cc: Richard Fichter
Bacon & Thomas, PLLC
625 Slaters Lane, Fourth Floor
Alexandria, VA 22314

enc: Office Action dated March 25, 2003 (PTO-326)
Notice of References Cited (PTO-892)
Information Disclosure Statement (PTO-1449)
WO 93/15220 (Cockbain et al.)
EP 0726322 (Erling Sundrehagen)